

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7087 PCB GAP 10-08 OGSR/Guardians Ad Litem

SPONSOR(S): Governmental Affairs Policy Committee and Holder

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1200

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Governmental Affairs Policy Committee	11 Y, 0 N	Williamson	Williamson
1)	_____	_____	_____	_____
2)	_____	_____	_____	_____
3)	_____	_____	_____	_____
4)	_____	_____	_____	_____
5)	_____	_____	_____	_____

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The Florida Guardian ad Litem (GAL) Program is a partnership of community advocates and professional staff acting on behalf of Florida's abused and neglected children. As of December 14, 2009, approximately 23,000 children were represented by close to 7,000 volunteers in the GAL program.

Current law provides several public record exemptions for identification and location information of certain public employees and their spouse and children. In 2005, the Legislature added guardians ad litem to the public record exemption. The following information was made exempt from public records requirements:

- Home addresses, telephone numbers, places of employment, and photographs of current or former GALs; and
- Names, home addresses, telephone numbers, and places of employment of the spouses and children of such GALs.

The exemption applies only if the GAL provides a written statement that he or she has made reasonable efforts to protect such information from being accessible through other means available to the public.

The bill reenacts the public record exemption for identification and location information of guardians ad litem and their spouse and children. It expands the exemption to also protect the names and locations of school and daycare facilities attend by the children of GALs. Other similar exemptions provide protections for school and daycare information. As such, this expansion provides GALs with the same protections afforded other public employees with the same type of public record exemption.

The bill extends the repeal date from October 2, 2010, to October 2, 2015. In addition, it provides a public necessity statement.

The bill does not appear to have a fiscal impact on state or local governments.

The bill requires a two-thirds vote of the members present and voting for passage.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.² If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created³ then a public necessity statement and a two-thirds vote for passage are not required.

Guardian ad Litem Program

The Florida Guardian ad Litem (GAL) Program is a partnership of community advocates and professional staff acting on behalf of Florida's abused and neglected children. As of December 14,

¹ Section 119.15, F.S.

² Section 24(c), Art. I of the State Constitution.

³ An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

2009, approximately 23,000 children were represented by close to 7,000 volunteers in the GAL program.⁴

Guardians ad Litem⁵ are responsible for making independent recommendations to the court based on the best interests of a child. In order to accomplish this goal, some of the responsibilities of a GAL include:

- Visiting the child and keeping the child informed about the court proceedings;
- Gathering and assessing independent information on a consistent basis about the child in order to recommend a resolution that is in the child's best interest;
- Reviewing records;
- Interviewing appropriate parties involved in the case, including the child;
- Determining whether a permanent plan, which establishes the placement intended to serve as the child's permanent home, has been created for the child in accordance with federal and state laws and whether appropriate services are being provided to the child and family;
- Submitting a signed written report with recommendations to the court on what placement, visitation plan, services, and permanent plan are in the best interest of the child;
- Attending and participating in court hearings and other related meetings to advocate for a permanent plan that serves the child's best interest; and
- Maintaining complete records about the case, including appointments scheduled, interviews held, and information gathered about the child and the child's life circumstances.⁶

Public Record Exemptions for Identification and Location Information

Current law provides several public record exemptions for identification and location information of certain public employees and their spouse and children.⁷ Examples of protected information include home addresses, telephone numbers, and photographs of law enforcement personnel, firefighters, investigators for the Department of Children and Family Services, state attorneys, and code enforcement officers. Similar information concerning the spouse and children of such employees also is protected.

Exemption under Review

In 2005, the Legislature added guardians ad litem to the public record exemption.⁸ The following information was made exempt⁹ from public records requirements:

- Home addresses, telephone numbers, places of employment, and photographs of current or former GALs; and
- Names, home addresses, telephone numbers, and places of employment of the spouses and children of such GALs.

⁴ Bill analysis by the Statewide Guardian ad Litem Office, December 15, 2009, at 1. (on file with the Governmental Affairs Policy Committee).

⁵ Section 39.820(1), F.S., defines "guardian ad litem" to mean: as referred to in any civil or criminal proceeding includes the following: a certified guardian ad litem program, a duly certified volunteer, a staff attorney, contract attorney, or certified pro bono attorney working on behalf of a guardian ad litem or the program; staff members of a program office; a court-appointed attorney; or a responsible adult who is appointed by the court to represent the best interests of a child in a proceeding as provided for by law, including, but not limited to, this chapter, who is a party to any judicial proceeding as a representative of the child, and who serves until discharged by the court.

⁶ Bill analysis by the Statewide Guardian ad Litem Office, December 15, 2009, at 1. (on file with the Governmental Affairs Policy Committee).

⁷ See s. 119.071(4)(d), F.S.

⁸ Section 4 of chapter 2005-213, L.O.F., codified at s. 119.071(4)(d)1.h., F.S.

⁹ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991) If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (See Attorney General Opinion 85-62, August 1, 1985).

The exemption applies only if the GAL provides to his or her GAL office a written statement that he or she has made reasonable efforts to protect such information from being accessible through other means available to the public.¹⁰ The GAL also may protect such identification and location information held by any other agency¹¹ if he or she provides written notification to that custodial agency that he or she is a GAL who receives protection under s. 119.071(4)(d)h.1., F.S.

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2010, unless reenacted by the Legislature.¹²

EFFECT OF BILL

The bill reenacts the public record exemption for identification and location information of GALs and their spouse and children. It expands the exemption to also protect the names and locations of school and daycare facilities attend by the children of GALs, if the GAL provides a written statement that he or she has made reasonable efforts to protect such information from being accessible through other means available to the public. Other similar exemptions provide protections for school and daycare information. As such, this expansion provides GALs with the same protections afforded other public employees with the same type of public record exemption.

The bill extends the repeal date from October 2, 2010, to October 2, 2015. In addition, it provides a public necessity statement.

B. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., to reenact and expand the public record exemption for identification and location information of GALs and their spouse and children.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

¹⁰ Section 119.071(4)(d)1.h., F.S.

¹¹ Section 119.011(2), F.S., defines "agency" to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

¹² Section 119.071(4)(d)1.h., F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public record or public meeting exemption. The bill expands the current exemption under review; thus, it requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands the current exemption under review; thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

None.